

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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FRANK DEWHART,

Plaintiff,

v.

Case No. 1:07-CV-298

UNKNOWN CARLETY et al.,

HON. GORDON J. QUIST

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATION**

The Court has before it Plaintiff's objections to the report and recommendation dated May 2, 2007, in which Magistrate Judge Brenneman recommended that Plaintiff's complaint be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c) for failure to state a claim and that the Court decline to exercise supplemental jurisdiction over Plaintiff's state law claims. The magistrate judge concluded that Plaintiff's Eighth Amendment claim fails because Plaintiff failed to allege that he was physically touched, a requirement of a sexual harassment claim under the Eighth Amendment. The magistrate judge also concluded that Plaintiff's due process claim failed because Plaintiff did not allege that state post-deprivation remedies are inadequate. After conducting a *de novo* review of the report and recommendation, the Court concludes that the report and recommendation should be adopted by the Court.

The Court has reviewed Plaintiff's objections and finds nothing therein to persuade it that the magistrate judge's report and recommendation was erroneous. That is, Plaintiff fails to cite any basis to conclude that he could succeed on his Eighth Amendment claim without alleging touching that constituted physical harassment. Regarding his due process claim, Plaintiff states that no

remedy has been offered to him, but the magistrate judge identified several state law remedies that are available to Plaintiff to obtain compensation for his property. Therefore,

**IT IS HEREBY ORDERED** that the Magistrate Judge's Report and Recommendation issued May 2, 2007 (docket no. 4) is **APPROVED AND ADOPTED** as the Opinion of this Court.

**IT IS FURTHER ORDERED** that Plaintiff's complaint is **DISMISSED** pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c) for failure to state a claim. This Court finds no good-faith basis for an appeal of this matter within 28 U.S.C. § 1915(a)(3).

This dismissal counts as a strike for purposes of 28 U.S.C. § 1915(g).

This case is **concluded**.

Dated: June 28, 2007

/s/ Gordon J. Quist  
GORDON J. QUIST  
UNITED STATES DISTRICT JUDGE